

ROBERT J. VERCHOTA

IBLA 82-350

Decided May 6, 1982

Appeal from decisions of the Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void, N MC 128009 through N MC 128012, and declaring an unpatented millsite claim null and void ab initio, N MC 128013.

Decision relating to mining claims affirmed; appeal relating to millsite claim dismissed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim, and evidence of assessment work or a notice of intention to hold the claim, within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management; and on or before Dec. 30 of each calendar year thereafter, there also must be filed with BLM current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of loss in mail delivery, the consequences must be borne by the claimant.

APPEARANCES: Kirk R. Harrison, Esq., Las Vegas, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert J. Verchota appeals separate decisions of December 2, 1981, by the Nevada State Office, Bureau of Land Management (BLM), in the first of which BLM declared the unpatented Avis, Grey Eagle #1 and #2, and Sunny South

lode mining claims, N MC 128009 through N MC 128012, abandoned and void because no notice of intention to hold or evidence of assessment work for 1980 was filed with BLM on or before December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1; and in the second of which BLM declared the unpatented Alunite Millsite Fraction claim, N MC 128013, null and void ab initio because the land in lots 16 and 20, sec. 2, T. 23 S., R. 63 E., Mount Diablo meridian, Nevada, occupied by the millsite, was segregated from entry under the mining laws either because of the quitclaim deed which transferred all right, title, and interest in the land from the United States to Boulder City, Nevada, January 4, 1960 (lot 16), or by first form reclamation withdrawal which established the Boulder Canyon Reservoir site, January 3, 1929 (lot 20).

Appellant has submitted no reason for his appeal from the decision holding the Alunite Millsite Fraction claim null and void. Under 43 CFR 4.412, the failure to submit a statement of reasons within 30 days after filing a notice of appeal subjects the appeal to summary dismissal. As the notice of appeal was filed January 5, 1982, the statement of reasons was due in the office of this Board February 4, 1982. No reason for failure to submit a statement of reasons has been given. Accordingly, the appeal relating to the Alunite Millsite Fraction claim, N MC 128013, is dismissed.

Appellant alleges that the proof of labor for 1980 was recorded in Clark County, Nevada, on November 7, 1980, and a copy of the recorded instrument was mailed to BLM on that date. He asserts the mailing procedure followed after county recordation in 1980 was identical to that he followed in 1979 and 1981, in each of which years BLM has acknowledged timely receipt of the proof of labor. Appellant suggests that BLM has lost or mislaid a number of other proofs of labor or other instruments relating to mining claim recordation in the recent past so that the records of BLM should not be dispositive of this case. Appellant argues that FLPMA is not opposite as the land occupied by the mining claims was withdrawn January 3, 1929, under the first form of reclamation withdrawal for the Boulder Canyon Reservoir site, subsequent to the location of the claims, and that the only statute requiring recordation of the claims with BLM applicable to these locations is the Act of August 11, 1955, 30 U.S.C. §§ 621-625 (1976). Section 3 of the Act, 30 U.S.C. § 623 (1976), requires the owner of the claim to file with BLM a copy of the location notice within 60 days of location, and to file a statement of the assessment work each year within 60 days after the expiration of the assessment year. ^{1/} Appellant states that he cannot relocate these claims because of the reclamation withdrawal, and since he has been diligent in performance of the development work on the claims, the claims should not be declared abandoned and void, especially as no other mining claimant could be injured by appellant's retention of the claims.

^{1/} Appellant does not allege that he recorded his mining claims pursuant to 30 U.S.C. § 623 (1976).

[1] Section 314 of FLPMA, and the implementing regulations, 43 CFR 3833.2-1 and 3833.4, require that evidence of assessment work for each assessment year be filed in the proper office of BLM prior to December 31 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely and properly filed for recordation with BLM.

Despite appellant's statement that the document was properly and timely mailed after recordation in Clark County, Nevada, the regulations define "file" to mean "being received and date stamped by the proper BLM office," 43 CFR 1821.2-2(f), 43 CFR 3833.1-2(a). Thus, even if the mailing were prevented by Postal Service error from reaching the BLM office at all, that fact would not excuse appellant's failure to comply with the cited regulations and statute. Prudential Mining & Exploration, Inc., 60 IBLA 363 (1981); Philip Cramer, 57 IBLA 386 (1981). This Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1980); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirement of the statute unless the document was actually received by the proper BLM office on or before such date. Marvin G. Struck, 60 IBLA 197 (1981). Filing is accomplished only when a document is delivered to and received by the proper BLM office. 43 CFR 1821.2-2(f).

In response to this Board's specific request, BLM has reported that a diligent search has not disclosed any evidence to indicate receipt of a proof of labor from Mr. Verchota for 1980. The loss of certain other mining claim records, adverted to by appellant, is explained by BLM as having occurred while the records (pertaining to specific mining claims, with serial numbers other than those involved here) were in the process of being shipped to or from another BLM office where the records were sent for entry into a computer for record purposes. BLM categorically has denied declaring any of the claims for which documents were lost abandoned and void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by section 314 of FLPMA is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of any administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute or to afford any relief from the statutory consequences. Nicholaus P. Newby, 60 IBLA 264 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision relating

to the unpatented mining claims is affirmed, and the appeal relating to the millsite claim is dismissed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

